Supreme Court, U.S.
FILED
APR 24 1998
OFFICE OF THE CLERK

No. 97-1589

IN THE
Supreme Court of the United States
OCTOBER TERM, 1997

ERNST & YOUNG,
a Canadian Partnership of Chartered Accountants,
Petitioner,
v.
THE COMMISSIONER OF INSURANCE
OF THE STATE OF MICHIGAN,
Respondent.

On Petition for a Writ of Certiorari to the Court of Appeals of the State of Michigan

BRIEF IN OPPOSITION

JAMES J. WALSH *
SARAH HEISLER GIDLEY
BODMAN, LONGLEY & DAHLING LLP
100 Renaissance Center, 34th Floor
Detroit, Michigan 48243
(313) 259-7777

GREGORY M. PETRICK
MARK C. ELLENBERG
MARY ELIZABETH TAYLOR
CADWALADER, WICKERSHAM & TAFT
100 Maiden Lane
New York, New York 10038
(212) 504-6000
Attorneys for Respondent

* Counsel of Record

WILSON - EPES PRINTING CO., INC. - 789-0096 - WASHINGTON, D.C. 20001

QUESTION PRESENTED

Can Michigan exercise jurisdiction over the auditor of a Canadian insurer that is domiciled in and regulated by Michigan, where the auditor consents to the filing of its audit opinions with the Michigan insurance regulator and the claims asserted arise out of those opinions?

TABLE OF CONTENTS

	Page
QUESTION PRESENTED	i
TABLE OF AUTHORITIES	iv
OPPOSITION TO THE PETITION	1
STATEMENT OF THE CASE	1
A. The Lawsuit	2
B. Statement of Material Facts	3
1. E&Y-Canada Agreed to Comply With the Michigan Insurance Code	3
2. E&Y-Canada's Engagement With CLIC Connected It Inextricably to Michigan	4
3. E&Y-Canada is Not a Localized Canadian Business	5
C. The Court of Appeals Decision	6
REASONS FOR DENYING THE WRIT	7
I. THE MICHIGAN COURT'S DECISION FOLLOWS THE MINIMUM CONTACTS ANALYSIS ESTABLISHED BY THIS COURT	8
II. DECISIONS OF THE COURTS OF APPEALS INVOLVING NON-RESIDENT PROFESSIONALS REFLECT THE UNIFORM APPLICATION OF DUE PROCESS PRINCIPLES	10
III. THE MICHIGAN COURT'S DECISION IS NARROW	12
CONCLUSION	14
APPENDIX	1a

TABLE OF AUTHORITIES

CASES: Page

Asahi Metal Indus. Co. v. Superior Court of Calif., 480 U.S. 102 (1987) 8, 9
Austad Co. v. Pennie & Edmonds, 823 F.2d 223 (8th Cir. 1987) 11
Bullion v. Gillespie, 895 F.2d 213 (5th Cir. 1990) 11
Burger King Corp. v. Rudzewicz, 471 U.S. 462 (1985) 8, 9
Commissioner of Ins. v. Arcilio, 561 N.W.2d 412 (Mich. Ct. App. 1997) 6
General Elec. Capital Corp. v. Grossman, 991 F.2d 1376 (8th Cir. 1993) 11
International Shoe Co. v. Washington, 326 U.S. 310 (1945) 8
Keeton v. Hustler Magazine, Inc., 465 U.S. 770 (1984) 8
Leasco Data Processing Equip. Corp. v. Maxwell, 468 F.2d 1326 (2d Cir. 1972) 11
Robinson v. Giarmarco & Bill, P.C., 74 F.3d 253 (11th Cir. 1996) 11
Sawtelle v. Farrell, 70 F.3d 1381 (1st Cir. 1995) 11
Starbrite Distrib., Inc. v. Excelda Mfg. Co., 562 N.W.2d 640 (Mich. 1997) 10
T.M. Hylwa, M.D., Inc. v. Palka, 823 F.2d 310 (9th Cir. 1987) 11-12
World-Wide Volkswagen Corp. v. Woodson, 444 U.S. 286 (1980) 10
Young v. FDIC, 103 F.3d 1180 (4th Cir.), *cert. denied*, 118 S. Ct. 329 (1997) 11

STATUTES:

Mich. Comp. Laws ("MCL"):
§ 500.1001 3-4
§ 500.1009(2) 4
§ 500.1025 4

IN THE

Supreme Court of the United States

OCTOBER TERM, 1997

No. 97-1589

ERNST & YOUNG,
a Canadian Partnership of Chartered Accountants,
Petitioner,

v.

THE COMMISSIONER OF INSURANCE
OF THE STATE OF MICHIGAN,
Respondent.

On Petition for a Writ of Certiorari to the Court of Appeals of the State of Michigan

---

BRIEF IN OPPOSITION

OPPOSITION TO THE PETITION

Respondent, the Commissioner of Insurance of the State of Michigan, respectfully requests that the Court deny the petition of Ernst & Young ("E&Y-Canada") for a writ of certiorari to review the judgment of the Court of Appeals for the State of Michigan.

STATEMENT OF THE CASE

This case does not raise an issue of global significance for accountants or other professionals. The lone issue presented is whether the auditor of a Canadian insurance company that has Michigan as its domicile for purposes of regulation in the United States can be sued in Michigan by the Insurance Commissioner on claims arising from

misleading audited financial statements and the auditor's opinions on those statements. The Michigan Court of Appeals found jurisdiction on the basis of evidence that (1) the auditor expressly acknowledged to the Commissioner that its audit opinions would be provided to him and could be relied upon by him as its client's primary United States regulator, pursuant to a requirement of Michigan law; (2) the audit opinions were, in fact, delivered to the Commissioner and to Michigan policyholders; and (3) the auditor profited from the arrangement.

The decision below in no way conflicts with the principles of personal jurisdiction this Court has established. The Michigan Court simply applied those principles to the unique facts of this case. Similarly, E&Y-Canada's contention that the United States Courts of Appeals have expressed conflicting legal standards lacks substance. The Courts of Appeals, like the Michigan Court, have consistently applied this Court's clearly articulated legal principles to the facts of each case. There exists neither a need nor a basis for granting a writ of certiorari.

A. The Lawsuit

This case arises out of the collapse of Confederation Life Insurance Company ("CLIC"), a Toronto-based mutual life insurer. Many years ago, CLIC selected Michigan as its "state of entry" into the United States. This act established Michigan as CLIC's United States domicile and the Michigan Insurance Commissioner as its primary regulator in this country, where CLIC conducted the majority of its business.[1] As required by the Michigan insurance code, CLIC placed assets in a United States trust for

---

[1] CLIC's operations in the United States were referred to as the "United States branch", which included all of CLIC's assets and liabilities in this country. CLIC's audited financial statements for 1990, 1991, 1992 and 1993 show that its revenues from the United States branch substantially exceeded its Canadian revenues.

the payment of claims of United States policyholders in the event of insolvency.

On August 12, 1994, the Ingham County Circuit Court, State of Michigan, entered an order placing CLIC's United States branch into rehabilitation proceedings under the insurance code and appointing the Commissioner rehabilitator.[2] As rehabilitator, the Commissioner is authorized to bring actions on behalf of the insurer's United States policyholders and the rehabilitation estate. To help address a $1 billion shortfall in the United States trust, the Commissioner commenced this action in June, 1995 against E&Y-Canada and other parties responsible for damages suffered by United States policyholders. The complaint alleges claims against E&Y-Canada for professional negligence, fraud, breach of contract and negligent misrepresentation in connection with its audits of CLIC's financial statements for the years 1990, 1991, 1992 and 1993.

E&Y-Canada filed a motion to dismiss for lack of personal jurisdiction, which the circuit court denied. The Michigan Court of Appeals granted a discretionary interlocutory appeal and affirmed the circuit court. The Michigan Supreme Court denied E&Y-Canada's application for leave to appeal.

B. Statement of Material Facts

1. E&Y-Canada Agreed to Comply With the Michigan Insurance Code

Independent auditors play a critical role in Michigan's regulation of insurance. Chapter 10 of the insurance code, MCL 500.1001 *et seq.*,[3] requires an insurer to desig-

---

[2] Simultaneously, CLIC's Canadian operations were placed in liquidation proceedings under Canada's Winding-Up Act.

[3] Relevant sections of MCL 500.1001 *et seq.* are set forth in the Appendix *infra*.

nate an independent auditor and to file annually with the Michigan insurance bureau the report of the independent auditor on its financial statements. With E&Y-Canada's permission, CLIC designated that firm as its independent auditor.[4] Section 1009(2) of the insurance code, MCL 500.1009(2), requires that the insurer file a letter from its independent auditor certifying its awareness that the audited financial statements will be filed with the Commissioner and that its audit opinion would be expressed in conformity with the Michigan insurance code and the relevant accounting standards.[5] E&Y-Canada gave CLIC such an "awareness letter" for submission to the insurance bureau.

2. E&Y-Canada's Engagement With CLIC Connected It Inextricably to Michigan

E&Y-Canada fully appreciated that Michigan, on behalf of all the states, regulated CLIC in the United States. In its summary review memorandum on the 1992 audit, E&Y-Canada quite accurately described its client's Michigan connection:

> In the United States, insurance regulation is generally a state, rather than a federal, function. . . . [T]he insurer's state of domicile [has] primary responsibility for solvency and corporate matters.
>
> Confederation is licensed to transact life insurance business in, and is subject to regulation and supervision by, every state in the United States, as well as the District of Columbia and Puerto Rico. Confederation has designated Michigan as its "state of entry"

---

[4] Section 1001 of the insurance code, MCL 500.1001, allows a Canadian insurer to designate a Canadian chartered accountant to serve in that role. *See* Appendix *infra*.

[5] For Canadian insurers, Michigan accepts financial statements that comply with Canadian generally accepted accounting standards and the requirements of the Canadian insurance regulator. MCL 500.1025. *See* Appendix *infra*.

> which is treated as its state of domicile for purposes of reporting and examination.

From its audits, E&Y-Canada also knew that CLIC had many Michigan policyholders.[6] E&Y-Canada's "audit profile" for the 1992 CLIC audit begins:

> In accepting an audit engagement, *we assume a responsibility to the policyholders of* Confederation Life, the Superintendent of Financial Institutions and *other foreseeable parties who rely on the information* presented in the financial statements of Confederation Life Insurance Company and its subsidiaries.

Emphasis added.

E&Y-Canada addressed its audit opinions for each year "To The Policyholders and Directors of Confederation Life Insurance Company." These audit opinions were available to all CLIC policyholders as part of CLIC's annual reports.

3. E&Y-Canada is Not a Localized Canadian Business

As a member of an international Ernst & Young organization,[7] E&Y-Canada promotes its services and solicits its business far beyond the borders of Canada. The Ernst & Young firms exploit the international scope of their activities, describing Ernst & Young in promotional literature as a "leading international professional services firm" with "a service force of over 60,000 people in more than 600 cities in over 100 countries." Insurance is an area in which E&Y-Canada and its sister firms claim international expertise: "Worldwide, we focus on major transnational industries: manufacturing/high technology, finan-

---

[6] Deferred savings plans for Michigan state employees were some of CLIC's largest policyholders, holding approximately $90 million of CLIC guaranteed investment contracts.

[7] E&Y-Canada is a member of Ernst & Young International, an umbrella organization to which all firms practicing under the Ernst & Young name throughout the world belong.

cial services, insurance, and energy." Moreover, E&Y-Canada's audits of CLIC were international in scope. Personnel from Ernst & Young offices in Toronto, Atlanta and London performed various audit procedures on CLIC, its U.S. branch and its subsidiaries in Canada, the United States and the United Kingdom.

C. The Court of Appeals Decision

The Michigan Court of Appeals had to decide whether the exercise of long-arm jurisdiction over E&Y-Canada, a non-resident partnership, was consistent with the requirements of due process.[8] Applying this Court's "minimum contacts" standard, the Michigan Court held:

> [W]here, as here, there is evidence that the auditors knew the purpose of the audit, knew what the client planned to do with the audit, knew the existence of a third party (the [Commissioner]), and that the third-party would be relying upon the audit, personal jurisdiction may be appropriately exercised.

App. at C-24.[9]

The Michigan Court rejected E&Y-Canada's focus on its lack of "physical" presence in Michigan because the proper test looks to a defendant's "minimum contacts" with the forum. *Id.* at C-13. The Michigan Court examined all of E&Y-Canada's contacts with Michigan, including its "awareness letter" and its explicit acknowledgment of responsibility to CLIC's policyholders and others relying on its audit work. The Michigan Court found that E&Y-Canada: (1) purposefully directed its audits to the Commissioner and Michigan policyholders; (2) had an

---

[8] Michigan's long-arm statute has been construed to extend to the limits of due process. *Commissioner of Ins. v. Arcilio*, 561 N.W.2d 412, 421 (Mich. Ct. App. 1997).

[9] The designation "App. at ——" refers to the Appendix to the petition. The Michigan Court of Appeals opinion is attached thereto as Appendix C.

ongoing contractual relationship with a corporate citizen of Michigan; (3) knew that its services were necessary for the continuation of CLIC's business in the United States; and (4) received substantial fees for serving as CLIC's regulatory auditor. Based upon these facts, the Michigan Court concluded that E&Y-Canada had purposefully availed itself of Michigan business opportunities such that jurisdiction over E&Y-Canada was consistent with due process. *Id.* at C-15.

REASONS FOR DENYING THE WRIT

None of the arguments presented by E&Y-Canada to justify a writ of certiorari are persuasive. First, the decision of the Michigan Court does not conflict in any way with previous decisions of this Court. Any perceived conflict results from E&Y-Canada's distorted version of the facts and skewed interpretation of the Michigan Court's opinion. Second, there is no conflict among the Courts of Appeals on the limits of personal jurisdiction over non-resident professionals. The courts have uniformly applied the "minimum contacts" standard. They have reached different conclusions depending only on the varying quality and nature of the defendant's activities in each case. Third, there is no important issue for the Court to decide. The Michigan Court's analysis is consistent with this Court's jurisprudence, and its holding is confined to the unique facts of this case. In particular, the regulatory scheme underlying Michigan's assertions of jurisdiction over E&Y-Canada makes this case an inappropriate platform for a broad consideration of personal jurisdiction over a non-resident professional providing services to a forum resident.

I. THE MICHIGAN COURT'S DECISION FOLLOWS THE MINIMUM CONTACTS ANALYSIS ESTABLISHED BY THIS COURT

The exercise of long-arm jurisdiction over a non-resident defendant comports with due process if "the defendant purposefully established 'minimum contacts' in the forum state." *Asahi Metal Indus. Co. v. Superior Court of Calif.*, 480 U.S. 102, 109 (1987) (*quoting Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 474 (1985)); *International Shoe Co. v. Washington*, 326 U.S. 310, 316 (1945). "Minimum contacts" exist where "the defendant has 'purposefully directed' his activities at residents of the forum and the litigation results from alleged injuries that 'arise out of or relate to' those activities." *Burger King*, 471 U.S. at 472 (citations omitted); *Keeton v. Hustler Magazine, Inc.*, 465 U.S. 770, 774 (1984).

The Michigan Court's decision is fully consistent with these fundamental principles. The Michigan Court stated: "The pivotal question here is not whether E&Y-Canada had physical contact with the forum state (Michigan); it is instead whether E&Y-Canada purposefully established 'minimum contacts'—a sufficient nexus with Michigan—so that requiring E&Y-Canada to defend itself in a suit in Michigan does not offend traditional notions of 'fair play and substantial justice.'" App. at C-13 (*citing International Shoe*, 326 U.S. at 320). The Michigan Court determined that E&Y-Canada, by purposefully directing its audit work to the Commissioner and Michigan policyholders, established "minimum contacts" with the state so that the maintenance of this suit was reasonable.

The Michigan Court also recognized that the " 'purposeful availment' " determination requires a deliberate act on the part of the defendant, rather than " 'random,' 'fortuitous,' or 'attenuated' contacts." App. at C-14 (*quoting Burger King*, 471 U.S. at 475). After a thorough review of the facts, the Michigan Court concluded that

E&Y-Canada had purposefully availed itself of Michigan business opportunities in 1991, 1992 and 1993 because it performed audits for a "statutory corporate citizen" of Michigan, knowing that its contractual relationship with CLIC was a prerequisite for CLIC to do business in Michigan and the United States, and profited from the arrangement. App. at C-15.

The Michigan Court did not attribute the unilateral activities of CLIC to E&Y-Canada to establish personal jurisdiction. E&Y-Canada's characterization of its own contacts with Michigan as "indirect" is highly disingenuous. Not only did E&Y-Canada undertake to perform statutorily required audit services for an insurer domiciled in Michigan but, by its own statements, E&Y-Canada voluntarily and expressly assumed an obligation to CLIC policyholders in the United States, including those in Michigan, and through them to the Commissioner as the primary regulator on behalf of those policyholders. The Michigan Court followed the dictates of this Court in looking to whether the defendant "has created 'continuing obligations' between himself and residents of the forum" or whether the defendant's contacts "proximately result from actions by the defendant himself that create a 'substantial connection' with the forum state" before concluding that the exercise of jurisdiction was proper. *See Burger King*, 471 U.S. at 475-76 (citations omitted).

In a clear distortion of the Michigan Court's decision, E&Y-Canada contends that the court relied on the "foreseeability" argument rejected in *Asahi*, 480 U.S. at 102. In that products liability case, a plurality of this Court held that "the placement of a product into the stream of commerce, *without more*, is not an act of the defendant purposefully directed toward the forum State" and will not support personal jurisdiction. *Id.* at 112 (emphasis added). The Michigan Court, by contrast, found that it was neither mere happenstance nor the "stream of commerce" that brought E&Y-Canada's audit reports to the attention of CLIC's policyholders and the Commissioner:

> . . . [W]e too note that E&Y-Canada did *not* merely place its audits "into the stream of commerce, not having further knowledge regarding where that product might end up." Rather, E&Y-Canada purposefully directed its audit at the [Commissioner] and Michigan policyholders "which is qualitatively different than the mere act of placing its product into the stream of commerce."

App. at C-16 (*quoting Starbrite Distrib., Inc. v. Excelda Mfg. Co.*, 562 N.W.2d 640, 644-45 (Mich. 1997) (emphasis in original)).

To predicate jurisdiction on this analysis is entirely consistent with this Court's due process decisions. *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 296 (1980) ("[T]he foreseeability that is critical to due process analysis is not the mere likelihood that a product will find its way into the forum State . . . [but] is that the defendant's conduct and connection with the forum State are such that he should reasonably anticipate being haled into court there.").

II. DECISIONS OF THE COURTS OF APPEALS INVOLVING NON-RESIDENT PROFESSIONALS REFLECT THE UNIFORM APPLICATION OF DUE PROCESS PRINCIPLES

There is no "conflict" among the Courts of Appeals concerning when due process permits long-arm jurisdiction over a professional. When E&Y-Canada's cases are reviewed in their entirety, it is clear that the courts have applied the minimum contacts standard consistently, with the results dependent on the fact-specific inquiry into a particular defendant's contacts with the forum state.

None of the cases cited by E&Y-Canada turn on the issue of foreseeability alone. *See* Petition at 16-22. In each case, the court examined the nature and quality of the defendant's specific acts and conduct to determine whether the exercise of personal jurisdiction was proper

and consistent with this Court's holdings. In those cases where the defendant had at most incidental contacts with the forum state, or where the defendant's services were not specifically connected to acts in the forum giving rise to the suit, the courts found no jurisdiction. *Young v. FDIC*, 103 F.3d 1180, 1191-92 (4th Cir.) (auditor's use of one piece of information from bank account in forum in preparation of financial statements insufficient to connect the accountant to the forum), *cert. denied*, 118 S. Ct. 329 (1997); *Sawtelle v. Farrell*, 70 F.3d 1381, 1390-91 (1st Cir. 1995) (communications sent by defendant lawyers to plaintiffs in forum about litigation being conducted in another state too tenuous for jurisdiction); *Austad Co. v. Pennie & Edmonds*, 823 F.2d 223, 226-27 (8th Cir. 1987) (same); *General Elec. Capital Corp. v. Grossman*, 991 F.2d 1376, 1387-88 (8th Cir. 1993) (accountant's transmittal of public company's financial statements for filing with SEC which were then reviewed by plaintiffs in forum insufficient basis for jurisdiction); *Leasco Data Processing Equip. Corp. v. Maxwell*, 468 F.2d 1326, 1342 (2d Cir. 1972) (transmittal of auditor's report to potential investors, without further involvement of auditor in activities that gave rise to suit, insufficient to establish minimum contacts).

On the other hand, courts have exercised jurisdiction where the nature of the professional services the defendants rendered was such that the defendants were aware that their actions could have a substantial effect in the forum state. *Robinson v. Giarmarco & Bill, P.C.*, 74 F.3d 253, 258-59 (11th Cir. 1996) (where attorney provided estate planning services for forum resident, knowing that the forum would probate and administer the estate, forum had jurisdiction over attorney in negligence action arising out of services); *Bullion v. Gillespie*, 895 F.2d 213, 217 (5th Cir. 1990) (non-resident doctor's act of shipping drugs to patient in forum for use in doctor's experiment was sufficient contact for jurisdiction in tort claim arising from use of drugs); *T.M. Hylwa, M.D., Inc. v. Palka*,

823 F.2d 310, 314 (9th Cir. 1987) (accountants' contract to provide personal services to client in forum state created continuing obligation sufficient for minimum contacts).

These decisions evidence no disagreement over principles or confusion over applicable standards that would warrant review and clarification. E&Y-Canada's real complaint is that the Michigan Court reached the wrong conclusion based on E&Y-Canada's version of the critical facts. That, however, would not justify a writ of certiorari.

III. THE MICHIGAN COURT'S DECISION IS NARROW

To inflate the significance and potential impact of the Michigan Court's decision, E&Y-Canada complains that "the simple act of performing professional services for a multinational corporation will subject that same professional firm to suit anywhere the multinational corporation does business." Petition at 23. The Michigan Court's decision does not sweep so broadly. It is limited to the context of the state-based scheme of insurance regulation in which independent auditors serve a critical function. As the Michigan Court noted: "The underlying purpose behind Michigan's comprehensive insurance regulations would be eviscerated if an accounting firm could voluntarily provide misleading financial information about an insurer to the [Commissioner] and escape liability in this state." App. at C-20. The influence of the regulatory scheme, including CLIC's citizenship under it, pervades the Michigan Court's analysis.

E&Y-Canada ignores the significance of Michigan's interests and focuses on the supposed burdens created by the exercise of jurisdiction over it. *See* Petition at 23-24. As the scope of the CLIC audits themselves show, E&Y-Canada's activities are not limited to Canada. In this regard, E&Y-Canada informs the Court that accounting work relating to CLIC in the United States was performed only by Ernst & Young LLP, the United States member

of the Ernst & Young firm. *See id.* at 5. It neglects to mention that Ernst & Young LLP has moved for its dismissal from this suit on the ground that only E&Y-Canada issued an audit opinion and that E&Y-Canada directed all of the U.S. entity's activities. If E&Y-Canada and Ernst & Young LLP could not be sued in the same forum, these inconsistent positions could produce inconsistent verdicts, permitting the Ernst & Young family to escape all liability for a defective audit. Such a result would be both manifestly unjust and wholly out of touch with modern economic realities.[10]

E&Y-Canada is an active member of an association of commonly named accounting firms that touts its global presence in pursuit of trans-border business. E&Y-Canada enjoyed the benefits of its multinational engagement for CLIC and cannot now avoid answering in Michigan for the consequences that have followed. Its claim of unfair burden rings hollow.

---

[10] Even a Canadian court has recognized Michigan's interest in dealing with the claims arising out of CLIC's insolvency and the minimal burden on E&Y-Canada if forced to litigate here. E&Y-Canada attempted to pursue a claim in Canada against a CLIC subsidiary that is now in bankruptcy, on the theory that the subsidiary would be liable to E&Y-Canada for any damages E&Y-Canada incurred in this litigation. The Ontario Court of Appeals held that E&Y-Canada should litigate its claim against the subsidiary in Michigan. E&Y-Canada has since named the bankruptcy trustee for the subsidiary as a third-party defendant in this litigation.

CONCLUSION

For the foregoing reasons, Respondent respectfully requests that the Petition for a Writ of Certiorari be denied.

Respectfully submitted,

JAMES J. WALSH *
SARAH HEISLER GIDLEY
BODMAN, LONGLEY & DAHLING LLP
100 Renaissance Center, 34th Floor
Detroit, Michigan 48243
(313) 259-7777

GREGORY M. PETRICK
MARK C. ELLENBERG
MARY ELIZABETH TAYLOR
CADWALADER, WICKERSHAM & TAFT
100 Maiden Lane
New York, New York 10038
(212) 504-6000

Attorneys for Respondent

* Counsel of Record

April 24, 1998.